In the High Court of Uttaranchal, at Nainital.

Appeal against Order No. 3/2001

1- Devi Prasad Purohit,
S/o Late Mukund Ram Purohit,

2- Km. Premlata, D/o Late Madan Mohan,

3- Master Manoj Kumar, S/o Late Madan Mohan,

4- Km. Prabha D/o Late Madan Mohan,
All R/o Vilalge Semigwarh,

Patwari Kshetra Bamoth, Tehsil Pokhari,
District Chamoli- appellants 2 to 4 under
the guardianship of their real uncle and natural
guardian Devi Prasad Purohit …Claimants/Appellants.

Versus

1- Shiv Prasad,

2- Devi Prasad,

3- Ram Prasad,

4- Kalika Prasad,

5- Shambhu Prasad

All above S/o late Chandramani,
R/o Village Devsthan, Patwari
Kshetra Pokhari, District Chamoli

6- Oriental Insurance Company through
its Branch Manager, University Gate
Branch Srinagar, Garhwal …Opp. Parties/Respondents.

Sri Rajendra Dobhal, Advocate for the appellants.
Sri Narain Singh Negi, Advocate for respondent Nos. 1 to 5.
Sri D.S. Patni, Advocate for the respondent No.6.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: May 10, 2006.

This Appeal against Order under Section 173 of Motor Vehicle Act, has been filed against the judgment and award dated 17-11-2000, passed by M.A.C.T./District Judge, Chamoli, in M.A.C.P. No. 1/1998, Devi Prasad and others Versus Purva Devi and others.

2- Brief facts of the case, as per the claim petition, are that on 2-12-1997 Km. Pinki aged about 5 years along with her mother

Smt. Janki Devi and father Madan Mohan were returning to Karanprayag Semigwar riding in a truck No. U.S.Y. 3224 after attending an engagement ceremony at Village Dewar Pokhari. When the offending truck reached near Udamanda it met to accident by the rash and negligent driving of the driver. All the persons including Km. Pinki riding in the offending truck died in the accident. The claimants/appellants are the minor brother and sisters of the deceased Km. Pinki who have filed the claim petition under the guardianship of their uncle appellant Devi Prasad Purohit. The claimants/appellants claimed compensation for Rs. 5,00,000/- in lieu of death of Km. Pinki.

3- The respondents 1 to 5 were the co-owners offending truck. Respondent No.2 Devi Prasad filed written statement before the Tribunal. He admitted the accident. He alleged that the offending truck was registered in the name of his father Chandramani and after the death of Chandramani it was joint property of respondents 1 to 5 and at the time of accident the truck was being plied under the control of his brother respondent Shiv Prasad. It was also alleged that Madan Mohan father of the deceased Km. Pinki had hired the offending truck for contract work. The deceased was not a valid passenger in the truck. It was also alleged that the offending truck was insured with Oriental Insurance Company and at the time of accident had valid insurance.

4- The respondent No.6, Oriental Insurance Company filed its written statement and pleaded that the driver of offending truck was not having valid driving licence and fitness papers. It was also pleaded that the truck was not authorized to carry passengers hence the Insurance Company is not liable to pay compensation. The Insurance Company also alleged that the claim petition is bad for non-joinder of parties.

5- The other respondents in spite of service of notices did not come forward to contest the claim.

6- The Tribunal, on the pleadings of parties, framed the following issues for determination:-

(1) Whether Km. Pinki died in the accident on 2.12.1997 at 2.30 P.M. due to the rash and negligent driving of truck No. USY 3224, as alleged by the claimants?.

(2) Whether the offending truck was insured with Oriental Insurance Company and its driver was having valid driving licence and registration certificate?.

(3) To what amount of compensation, the claimants are entitled to get and against whom?.

(4) Whether the driver and the owner of the Truck have breached the conditions of the insurance policy, as alleged by the Insurance Company in para-20 of its W.S?.

(5) Whether the claim petition is bad for non-joinder of parties, as alleged by the Insurance Company in paragraph-24 of its W.S?.

7- The parties led oral and documentary evidence in support of their case. The claimants/appellants produced P.W.1 Devi Prasad and P.W.2, Faqurddin. The respondent No.6, Oriental Insurance Company did not adduce any evidence. However, respondent No.2, Devi Prasad produced himself as D.W.1 and also filed documentary evidence.

8- The Tribunal after perusing the evidence on record and having heard the counsel for the parties, dismissed the claim petition vide impugned judgment and order dated 17-11-2000.

9- Feeling aggrieved, the claimants/appellants have filed this appeal before this Court.

10- Heard the learned counsel for the parties and perused the record.

11- It is to be seen first of all whether the accident took place on account of rash and negligent driving of the driver of offending truck in question or on account of some mechanical defect. The truck owner in his W.S. has pleaded that the accident had take place on account of the mechanical defect in the truck due to which the truck driver also died at the spot. P.W.2, Fakruddin has been produced as an eye witness of the accident who has stated that he has a bakery shop Semigwar and on the date of accident he had gone to Udamanda for selling the biscuits. He saw that a truck was

being driven with rash and negligence and it fell in a Khud due to which five persons succumbed to injuries. This witness has stated that the truck fell in a river which was flowing deep in the Khud. There is nothing on the record which may indicate that the accident took place on account of some mechanical defect occurred in the truck. The factum of the accident is also established from the perusal of the first information report which was lodged by one Ram Prasad at Police Station on 2.12.1997. The post mortem report of the deceased Pinki also indicates that she sustained injuries in this accident. Therefore it is held that accident took place on account of rash and negligent driving of truck No. USY 3224.

12- It is now to be seen whether the offending truck was insured with the Insurance Company on the date of accident or not.

13- The evidence on record shows that the tax of this vehicle was paid by the owner of the vehicle upto 31.12.1997. The truck in question was registered in the name of Chandramani who was the father of respondent Nos. 1 to 5. Paper No. 39-C which is available on the record, is the fitness of the vehicle and shows that it was renewed upto 17.12.1997. There is no document available on the record which may suggest that there was a renewal with regard to the fitness of the offending truck after 17-12-1997. But this does not affect the merit of this case as the accident took place on 2.12.1997 and on that date there was a certificate in favour of the offending vehicle with regard to its fitness. The Insurance Policy which is available on the record shows that the truck in question was insured w.e.f. 26.5.1997 to 25.5.1998 therefore it is quite clear that on the date of accident the truck in question was insured with Oriental Insurance Company.

14- The next important question which is involved in this case is whether the driver of the truck was having valid driving licence at the time of the accident and in case if the driver was not having valid driving licence at the time of the accident, as has been pleaded by the Insurance Company in the W.S., then would it be the liability of the Insurance Company to pay the amount of compensation or the same would be paid by the insured, i.e., the owner of the vehicle.

15- The record reveals that photo copy of the driving licence is available on record as paper No. 41-C which has been filed by the insured of the vehicle and it shows that Mahesh Singh S/o Shyam Singh who was the driver of the vehicle had a valid driving licence for plying the heavy vehicle for a period of 30-6-96 to 29-6-97. There is nothing on record which may indicate that the driving licence was further renewed by any competent authority. Therefore, it cannot be said that the driver of the offending truck was having a valid driving licence on 2.12.1997, i.e. the date of accident.

16- The Three Hon'ble Judges Bench of Supreme Court in a case **Malla Prakasarao Versu Malla Janaki and others** reported in **(2004) 3 Supreme Court Cases 343** has held as under:-

> "**1.** It is not disputed that the driving licence of the driver of the vehicle had expired on 20-11-1982 and the driver did not apply for renewal within thirty days of expiry of the said licence, as required under Section 11 of the Motor Vehicles Act, 1939. It is also not disputed that the driver of the vehicle did not have driving licence when the accident took place. Accordingly to the terms of the contract, the Insurance Company has no liability to pay any compensation where an accident takes place by a vehicle, driven by a driver without a driving licence. In that view of the matter, we do not find any merit in the appeal."

17- A careful consideration of the cited judgment of the Hon'ble Apex Court, we are of the view that the Tribunal has rightly concluded its finding by observing that the Insurance Company cannot be held to be liable for making the payment of compensation to the claimants. It is the liability of the insured, i.e. the respondent Nos. 1 to 5 to pay the amount of compensation to the claimants/appellants. It is worthy to mention here that the owner of the vehicle have not challenged the finding of the Tribunal in any manner before this Court.

18- The another point for determination which arises in this appeal is whether the claimants are entitled for any compensation in lieu of the death of Km. Pinki. Admittedly Km. Pinki was five years of age at the time of accident as is evident from the post

mortem report. Father and mother of Km. Pinki are also dead in the accident. The claimant/appellant No.1 cannot be said to be a dependent on the deceased. It also cannot be held that appellant No.1 Devi Prasad has suffered any financial loss on account of death of Km. Pinki. As far as the other appellants are concerned, they are, of course minor brother and sisters of deceased Km. Pinki, but as Km. Pinki was the youngest, therefore those appellants also cannot held to be dependent upon the deceased. The Hon'ble Supreme Court in a case **C.K. Subramonia Iyer and others. Vs. T. Kunhikuttan Nair and others** reported in **A.I.R. 1970 Supreme Court page 376** has observed that:-

> " The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained."

19- The Tribunal has rightly held that the appellants cannot be said to be dependent upon the deceased Km. Pinki, hence they are not entitled for any compensation.

20- On the basis of assessment of evidence on record, we come to the conclusion that the claim petition has been rightly dismissed by the M.A.C.T. concerned vide impugned judgment and order dated 17-11-2000 on the ground that the claimants/appellants cannot be said to be dependent upon the deceased Km. Pinki. We do not find any infirmity in the judgment and order passed by the Tribunal.

21- The appeal lacks merit and is liable to be dismissed.

22- Accordingly the appeal is dismissed. The judgment and order dated 17-11-2000, passed by the M.A.C. Tribunal Chamoli in M.A.C.P. No. 1/1998 is hereby confirmed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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